

BRANDYE N. FOREMAN  
State Bar No. 277110  
BARRETT DAFFIN FRAPPIER  
TREDER & WEISS, LLP  
20955 Pathfinder Road, Suite 300  
Diamond Bar, California 91765  
(626) 915-5714 – Phone  
(972) 661-7726 - Fax  
File No. 7214745  
ndcaecf@BDFGroup.com

Attorney for Movant  
WELLS FARGO BANK, N.A.

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA – SAN JOSE DIVISION

In re:  
ALTON PURVIS, JR.,  
dba INTERNATIONAL CATERING  
NETWORK,  
dba CONTRACT MAINTENANCE &  
CONCEPTS,

Debtor.

CASE NO.: 17-52004 SLJ-13  
CHAPTER: 13  
R.S. NO.: EAT-1882

MOTION FOR RELIEF FROM THE  
AUTOMATIC STAY

[PROPERTY: 3421 ANTONACCI COURT,  
SAN JOSE, CA 95148-1750]

DATE: 1/16/2018  
TIME: 10:30 a.m.  
PLACE: U.S. Bankruptcy Court  
Courtroom 3099  
280 S. First Street  
San Jose, California 95113-3099

WELLS FARGO BANK, N.A. (“Movant” or “Creditor”), its assigns and/or successors in  
interest hereby moves the court for an Order Terminating Automatic Stay for cause pursuant to *11*  
*U.S.C. §362(d)(1)* on the grounds hereafter set forth:

1. On August 21, 2017, the Debtor ALTON PURVIS, JR. dba INTERNATIONAL  
CATERING NETWORK dba CONTRACT MAINTENANCE & CONCEPTS (“Debtor”) commenced  
this voluntary Chapter 13 case in the United States Bankruptcy Court for the District of California, San

1 Jose Division, Case No. 17-52004 SLJ-13. DEVIN DERHAM-BURK is the duly appointed, qualified  
2 and acting Chapter 13 Trustee.

3 2. The court has subject matter jurisdiction over this Motion for Relief from the Automatic  
4 Stay under the provisions of 28 *U.S.C. Section 157(b)* and 11 *U.S.C. Section 362*. Venue in this court is  
5 proper under the provisions of 28 *U.S.C. Sections 1408* and *1409*.

6 3. The Debtor's estate includes real property commonly known as **3421 ANTONACCI**  
7 **COURT, SAN JOSE, CA 95148-1750** ("Property"), and legally described in the attached Deed of  
8 Trust.

9 4. On or about March 22, 2006, Debtor ALTON PURVIS, JR. executed a promissory note  
10 in the original sum of \$695,000.00 in favor of World Savings Bank, FSB. Debtor executed a  
11 promissory note secured by a mortgage or deed of trust. The promissory note is either made payable  
12 to Creditor or has been duly indorsed. Creditor, directly or through an agent, has possession of the  
13 promissory note. Creditor is the original mortgagee or beneficiary or the assignee of the mortgage or  
14 deed of trust. The note is secured by a first priority deed of trust against said real property recorded on  
15 March 30, 2006 as Document No. 18868274 in the Office of the County Recorder of Santa Clara  
16 County, California. The terms of the Debt Agreement were amended by the attached loan  
17 modification agreement entered into by and between World Savings Bank, FSB, kna Wachovia  
18 Mortgage, FSB and the Debtor(s) dated March 12, 2008 (the "Loan Modification Agreement").

19 5. Movant was formerly known as Wachovia Mortgage, FSB, formerly known as World  
20 Savings Bank, FSB. Effective December 31, 2007, World Savings Bank, FSB's charter and bylaws  
21 were amended to change its name to Wachovia Mortgage, FSB. Effective November 1, 2009, Wachovia  
22 Mortgage, FSB converted to a national bank with the name Wells Fargo Bank Southwest, National  
23 Association. Additionally, effective November 1, 2009, Wells Fargo Bank Southwest, National  
24 Association merged into and became a division of Wells Fargo Bank, National Association.

6. The Debtor defaulted in his monthly payment obligations prior to bankruptcy filing, and a Proof of Claim itemizing the debtor pre-petition default has been filed. Movant commenced non judicial foreclosure proceedings against the real property by recording a Notice of Default on March 24, 2017. A Notice of Trustee's sale was recorded on July 21, 2017. The foreclosure sale is currently set for December 29, 2017.

7. As of **December 5, 2017**, there are one or more defaults in paying post-petition amounts due with respect to the Debt Agreement.

8. As of **December 5, 2017**, the unpaid principal balance of the Debt Agreement is \$733,806.23.

9. The following chart sets forth those post-petition payments, due pursuant to the terms of the Debt Agreement, that have been missed by the Debtor as of **December 5, 2017**:

Number of Missed Payments	From	To	Missed Principal and Interest	Missed Escrow (if applicable)	Monthly Payment Amount	Total Amounts Missed
3	09/15/2017	11/15/2017	\$3506.23	\$960.02	\$4,466.25	\$13,398.75
<b>Less post-petition partial payments (suspense balance):</b>					<b>(\$3,714.00)</b>	

**Total: \$9,684.75**

10. On or about May 20, 2010, ALTON PURVIS, JR. filed a prior voluntary petition under Chapter 13, and was assigned Case No. 10-55257 SLJ-13. On January 11, 2011, an Order Granting Motion for Relief from the Automatic Stay was entered by the bankruptcy court.

11. On or about February 14, 2011, ALTON PURVIS, JR. filed a prior voluntary petition under Chapter 13, and was assigned Case No. 11-51334 SLJ-13. On December 20, 2011, an Order on Wells Fargo Bank, N.A.'s Motion for Relief from the Automatic Stay was entered by the bankruptcy court.

1           12.    On or about April 22, 2013, ALTON PURVIS, JR. dba INTERNATIONAL  
2 CATERING NETWORK dba CONTRACT MAINTENANCE & CONCEPTS filed a prior voluntary  
3 petition under Chapter 13, and was assigned Case No. 13-52212 SLJ-13. On March 3, 2017, an Order  
4 Granting Motion for Relief from Automatic Stay was entered by the bankruptcy court.

5           13.    Debtor filed a First Amended Chapter 13 Plan on September 18, 2017, alleging that  
6 his loan obligation with Movant was the subject of a loan modification application. The Debtor's  
7 Plan further provided that, pending the outcome of the loan modification application, the Chapter 13  
8 trustee will not pay any prepetition arrears claimed by Movant and that Debtor shall make a monthly  
9 modification installment of \$1,238.00.

10           14.   Prior to the bankruptcy filing, Movant determined that Debtor is ineligible for a loan  
11 modification and a denial letter was sent to Debtor on or about May 17, 2017. Debtor's loan is not  
12 currently under active loan modification review.

13           15.    The Debtor's material default constitutes cause to terminate the automatic stay under  
14 11 U.S.C. Section 362(d)(1) so that Movant can progress enforcement of its contractual default  
15 remedies to foreclose upon and recover possession of the real property. *See In re Ellis*, 60 B.R. 432,  
16 434-435 (9<sup>th</sup> Cir. BAP 1985).

17           WHEREFORE, movant prays for an Order as follows:

18           1.    For an order granting relief from the automatic stay under *11 U.S.C. Section 362(d)(1)* to  
19 allow moving party to enforce its state law foreclosure remedies against the real property described  
20 above and to allow the successful bidder to recover possession of said real property in accordance with  
21 applicable state laws.

22           2.    That the Order Granting Relief from the Automatic Stay be binding and effective  
23 notwithstanding any conversion of this case to a case under any Chapter of *Title 11* of the *United States*  
24 *Code* without further notice, hearing, or court order.

1           3.       That the Order Granting Motion for Relief from the Automatic Stay be deemed  
2 effective and enforceable immediately upon its entry with no stay on its enforcement as prescribed by  
3 *Rule 4001(a)(3) of the Federal Rules of Bankruptcy Procedure.*

4           4.       For such other relief as the court deems proper.  
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7                               BARRETT DAFFIN FRAPPIER TREDER  
8                               & WEISS, LLP

9       Dated: 12/20/2017

10                           By:    /s/ Brandye N. Foreman  
11                                   BRANDYE N. FOREMAN  
12                                   Attorney for Movant  
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